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301 CMR: EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

301 CMR 4.00: PROVISIONS FOR RECYCLING OF BEVERAGE CONTAINERS

Section

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4.01: Purpose

403 CMR 4.00 is promulgated to effectuate the purposes of M.G.L. c. 94, §§ 321 through 326.

4.02: Definitions

As used in 301 CMR 4.00, the following terms shall have the following meanings:

American Society for Testing Materials: means a technical society with headquarters currently located at 1916 Race Street, Philadelphia, Pennsylvania, 19103, which publishes national standards for the testing and quality assurance of materials.

Beverage: soda water or similar carbonated soft drinks, mineral water, and beer and other malt beverages, but shall not include alcoholic beverages other than beer and malt beverages, dairy products, natural fruit juices or wine.

Beverage container: any sealable bottle, can, jar, or carton which is primarily composed of glass, metal, plastic, or any combination of those materials and is produced for the purpose of containing a beverage. This definition shall not include containers made of biodegradable material, or of greater than two gallons capacity.

Biodegradable: will decompose or otherwise break down into components which are not hazardous materials within the meaning of M.G.L. c. 21E, § 2. These components may include only carbon dioxide, water, inorganic salts, microbial cellular components, miscellaneous by-products characteristically formed from natural materials, or other materials or substances determined by the Secretary to be environmentally benign. These components may not, under any circumstances, include "hazardous materials" as defined in M.G.L. c. 21E, § 2.

Bottler: any person filling beverage containers for sale to distributors or dealers.

Bureau: The Bureau of Solid Waste Disposal within the Department of Environmental Management.

Business hours: the period from opening to closing of a place of business.

Consumer: any person who purchases a beverage in a beverage container for use or consumption with no intent to resell such beverage.

Dealer: any person, including any operator of a vending machine, who engages in the sale of beverages in beverage containers to consumers in the Commonwealth; however, this does not include a restaurateur selling beverages to be consumed on the premises.

Deposit: the refund value of a beverage container.

4.02: continued

Distributor: any person who engages in the sale of beverages in beverage containers to dealers in the Commonwealth including any bottler who engages in such sales.

Identifiable: with brand name, size and refund legend easily determined.

Malt Beverages: all alcoholic beverages manufactured or produced by the process of brewing or fermentation of malt, with or without cereal grains or fermentable sugars, or of hops.

Mineral Water: water which is naturally or artificially impregnated with mineral salts and with gases such as carbon dioxide or which is sold as a mineral water.

Permanently labelled reusable glass beverage container: a glass beverage container which has the brand name permanently marked on it.

Person: any agency or political subdivision of the federal government or the Commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee, or agent of said person, and any group of said persons.

Photo degradable: will decompose or otherwise break down into components which are not hazardous materials within the meaning of M.G.L. c 21E, § 2. These components may include only carbon dioxide, water, inorganic salts, microbial cellular components, miscellaneous by-products characteristically formed from natural materials, or other materials or substances determined by the Secretary to be environmentally benign. These components may not, under any circumstances, include "hazardous materials" as defined in M.G.L. c. 21E, § 2.

Redemption Center: any person who owns and/or operates a facility for the purpose of accepting and redeeming containers from consumers, and who has registered with the Bureau as provided in 301 CMR 4.06.

Refund: the sum, equal to the deposit, that is given to the consumer or the dealer or both in exchange for empty returnable beverage containers.

Restaurateur: any person who operates a business for the sale of prepared food and/or alcoholic beverages for immediate consumption in the area under his control.

Reusable Beverage Container: any beverage container so constructed and designed that it is structurally capable of being refilled and resold by a bottler at least ten times after its initial use.

Sales for on-premise consumption: sales transactions in which beverages are purchased by a consumer for immediate consumption within the area under the control of a restaurateur.

Secretary: the Secretary of the Executive Office of Environmental Affairs, Commonwealth of Massachusetts.

Type of Beverage Container: the design, shape, color, and composition of beverage container.

4.03: Containers and Container Labelling

(1) Holding Devices. No dealer shall sell or offer for sale in the Commonwealth containers connected to each other by a separate holding device constructed of plastic rings or any other device or material which is not photodegradable or biodegradable and which is not capable of decomposing or otherwise breaking down to a degree whereby it does not pose a threat to wildlife through entanglement within 60 days of continual exposure to normal sunlight, microbial action, or other environmental forces.

4.03: continued

(a) Standards. A holding device shall be deemed to be capable of breaking down within sixty days so that it does not pose a threat to wildlife through entanglement, within the meaning of 301 CMR 4.03(1), if, after exposure to 60 days of continual exposure to normal sunlight, microbial action, or other natural environmental forces, it reaches the tensile brittle point, *i.e.*, exhibits 0 - 20% absolute elongation at break.

(b) Testing.

1. A natural weathering test shall be conducted in accordance with the American Society for Testing and Materials (ASTM), Standard Practice for Outdoor Weathering of Plastics, ASTM Designation: D 1435-85.
2. The following test shall be used to demonstrate loss of tensile strength: Standard Test Method for Tensile Properties of Plastic, ASTM Designation: D 638-87b, or Standard Test Methods for Tensile Properties of Thin Plastic Sheeting, ASTM Designation: D882-83.
3. The material and product made from the material shall not decompose, at any time during the degradation process, into components containing hazardous materials as defined in M.G.L. c 21E § 2. An extraction procedure (EP) Toxicity Test, Method 1310, shall be performed on the products of degradation.
4. An alternate product performance test may be substituted for 301 CMR 4.03(1)(b)2 if the following conditions are met:
 - a. Test data sufficiently relates the property to the rate of degradation.
 - b. It is the equivalent of what the rule test requires; and
 - c. A standard ASTM test exists for measuring the property.
5. Testing shall be performed on the manufacturer's material or product, not on the additive used to make the product degradable.
6. All testing shall be performed on all printed and pigmented sections of the product.
 - a. Testing may be performed on the material rather than the product if the product contains only the natural material and does not contain any inks, pigments or other additives including, but not limited to, plasticizers and stabilizers.
 - b. If more than one pigment or more than one ink is used, specimens with each shall be tested.
7. All testing shall be performed on a sample of equal or greater thickness than the thickest part of the product.
8. Test specimens shall be cut in the machine direction, except when the material has little or no orientation.

(c) Procedure.

1. All businesses desiring to have their holding devices approved for use in Massachusetts shall submit test data as required by this section to the Department of Environmental Protection, Division of Solid Waste.
2. Testing shall be performed by a third party testing service.
3. The test data shall be submitted in report form and shall include all the information specified in the report section of the ASTM standard test method.
4. The Department shall maintain a list of approved products.

(d) Labelling. Holding devices that have been approved for distribution and sale in Massachusetts shall be embossed with a diamond shaped symbol to indicate degradability.

(2) Refund Legend.

(a) Every beverage container, except permanently labelled reusable glass containers, imported into or offered for sale in the Commonwealth by a bottler, distributor, or dealer shall clearly indicate in at least 12 point type, by embossing or by stamp, or by label, or other method securely affixed by the manufacturer to any portion except the bottom of the beverage container, the refund value of the container and that it may be redeemed in the Commonwealth.

(b) Every permanently labelled reusable glass beverage container imported into, or offered for sale in the Commonwealth by a bottler, distributor, or dealer shall clearly indicate in at least 12 point type, by embossing or by stamp, or by label, or other method securely affixed to any portion except the bottom of the beverage container, that the container may be returned for deposit.

4.03: continued

(c) Notwithstanding the provisions of 301 CMR 4.03(2)(a) and (b), a dealer, distributor, redemption center or bottler may refuse to accept from any person any beverage container, except a permanently labelled reusable glass beverage container, which does not comply with 301 CMR 4.03(2)(a) and may refuse to accept any permanently labelled reusable glass container which does not comply with 301 CMR 4.03(2)(b).

(3) Sale Outside Commonwealth. 301 CMR 4.00 does not require refund legends or payment of a deposit or state indicia on beverage containers handled in the Commonwealth in the normal course of commerce for sale to bottlers, distributors, restaurateurs or dealers outside the Commonwealth.

4.04: Deposits

(1) Capacity of the Container. Every beverage container with a capacity of less than two gallons shall have a refund value of not less than 5¢. The provisions of 301 CMR 4.04 shall not apply to such containers sold by a distributor for use by a common carrier in the conduct of interstate passenger service.

(2) Deposit with Dealer. Except as provided in 301 CMR 4.04(3), every consumer shall deposit with the dealer the refund value of each beverage container purchased from that dealer.

(3) On-Premise Sales. A restaurateur may, but is not required to, collect a deposit from a customer for on-premise sales. A restaurateur who sells beverages in containers only for on-premise consumption may, but is not required to, redeem beverage containers for the public.

4.05: Refunds and Acceptance of Empty Beverage Containers

(1) Dealer's Obligations. Except as provided in 301 CMR 4.03(2)(c), a dealer shall accept from any person during all of his business hours any empty beverage container of the type, size, and brand sold by the dealer within the past 60 days and shall pay that person the refund value as indicated on each beverage container returned. In the event that a dealer discontinues the sale of any beverage and beverage container of the type, size, and brand sold by such dealer within the past 60 days, such dealer shall clearly post in a visible location on his premises a notice that empty beverage containers of that type, size, and brand will no longer be accepted by such dealer after the expiration of 60 days.

(2) Distributors' Obligations. Except as provided in 301 CMR 4.05(5) and 4.03(2)(c), a distributor shall accept from any dealer any empty beverage container of the type, size, and brand sold by the distributor within the past 60 days, and shall pay the dealer the refund value of the beverage container as indicated thereon plus a handling fee of at least 02.25¢ per container.

Acceptance of beverage containers from dealers shall be the responsibility and expense of distributors, and shall not be made less convenient and easy for dealers than acceptance at the time of delivery of filled containers. If the dealer pays cash upon the purchase of filled beverage containers, any refund value plus handling fee due that dealer with respect to empty beverage containers returned at the time of such purchase for cash shall be paid by the distributor within 15 days of receipt of such empty beverage containers or by the fifth business day of the month following receipt of such empty beverage containers.

In the event that a distributor discontinues the sale of any beverage and beverage container of the type, size, and brand sold by such distributor within the past 60 days, such distributor shall clearly provide notice to all dealers with whom he conducts business that empty beverage containers of that type, size, and brand will no longer be accepted by such distributor after the expiration of 60 days.

4.05: continued

(3) Bottlers' Obligations. Except as provided in 301 CMR 4.05(5) and 4.03(2)(c), a bottler shall accept from a distributor or a dealer, any empty reusable beverage container of the type, size, and brand sold by the bottler within the past 60 days and shall pay the distributor or dealer the refund value of the reusable beverage container as indicated thereon plus a handling fee of at least 1¢ per container if the empty reusable container is presented at the time and at the location where the distributor or dealer obtains filled reusable beverage containers from the bottler; provided, however, that a bottler other than a bottler of soft drinks manufacturing in the Commonwealth who offers to refund deposit is in accordance with 301 CMR 4.05, shall not require a distributor to pay the bottler a deposit for a beverage container which is not reusable, nor shall a bottler require of a distributor that beverage containers which are not reusable, be presented to the bottler at the location where the distributor obtains filled beverage containers.

In the event that a bottler discontinues the sale of any beverage and beverage container of the type, size, and brand sold by such bottler within the past 60 days, such bottler shall clearly provide notice to all distributors and dealers with whom he conducts business, that empty beverage containers of that type, size, and brand will no longer be accepted by such bottler after the expiration of 60 days.

(4) Rights of Redemption Centers. Except as provided in 301 CMR 4.03(2)(c), and 4.05(5), a distributor shall accept from any redemption center any empty beverage container of the type, size, and brand sold by the distributor within the past 60 days, and shall pay the redemption center the refund value of the beverage container as indicated thereon plus a handling fee. The handling fee shall be at least 2.25¢ per beverage container. Any amount due a redemption center shall be paid by the distributor within 15 days of receipt of empty beverage containers or by the fifth business day of the month following receipt of empty beverage containers.

In the event that a distributor discontinues the sale of any beverage and beverage container of the type, size, and brand sold by such distributor within the past 60 days, such distributor shall clearly provide notice to all redemption centers with whom he conducts business that empty beverage containers of that type, size, and brand will no longer be accepted by such distributor after the expiration of 60 days.

(5) Permissive Refusal.

(a) Condition of the beverage container. A bottler, dealer, distributor or redemption center may refuse to accept for redemption a beverage container which is not in acceptable condition. For a refillable glass beverage container, the container must be able to hold liquid, be able to be resealed, be in its original shape, and not be chipped or cracked to be acceptable. A nonrefillable glass beverage container may be chipped, but it may not have the bottom broken out or the neck broken off to be acceptable. Metal cans and plastic bottles must be easily identifiable and reasonably intact to be acceptable.

(b) Filth in the beverage container. A bottler, dealer, distributor or redemption center may refuse to accept a container which is not in a reasonably clean condition. An empty beverage container shall be free of foreign materials, such as paper, sticks, and cigarettes.

(c) Liquid in the beverage container. A bottler, distributor, dealer, or redemption center may refuse to accept beverage containers that are not empty. A beverage container is not empty if it holds a liquid in any significant amount.

(d) Vending machine exemption. An operator of (a) vending machine(s) who sells beverages in containers only in (a) vending machine(s) may refuse to accept beverage containers for redemption if he has posted a conspicuous notice on each vending machine indicating that a refund of not less than \$.05 is available on each container purchased and where and from whom the refund may be obtained.

(6)(a) Altered metal cans. In addition to the permissive refusal rights granted to dealers in 301 CMR 4.05(5), a dealer may refuse to accept a metal can which is substantially altered from its original shape.

(b) Unreasonable numbers of beverage containers. A dealer may refuse to accept more than 120 beverage containers from any one person during a 24 hour period.

4.06: Redemption Centers

(1) Any person may establish a redemption center, and shall have the right to determine what type, size, and brand of beverage containers shall be accepted.

(2) Notice of intent to operate a redemption center shall be filed with the Bureau by any person intending to establish a redemption center at least ten business days in advance of commencement of its operations. For those redemption centers in existence and operation upon the effective date of the provisions of 301 CMR 4.06, such notice shall be submitted to the Bureau, by the owner or operator thereof, within 15 business days of the effective date of the provisions of 301 CMR 4.06. Any owner or operator of a redemption center shall provide the Bureau, in such format as the Bureau shall determine, with current information on its operations on January first, and July first of each year.

A notice of intent, and the current information to be provided to the Bureau, shall include:

- (a) the owner's name and address,
- (b) the operator's name and address, if different from that of the owner,
- (c) the address of the redemption center,
- (d) the initial date of operation,
- (e) in the case of an existing redemption center, the number of beverage containers received and redeemed on a monthly basis,
- (f) in the case of a newly established redemption center, the anticipated number of beverage containers received and redeemed on a monthly basis, and
- (g) such information as the Bureau shall determine is necessary to ensure the protection of the public interest.

4.07: Penalties

The Attorney General and the district attorneys shall enforce the provisions of M.G.L. c. 94, §§ 321 through 326 inclusive and the provisions of 301 CMR 4.00. Any bottler, distributor, redemption center, or dealer who violates any provision of M.G.L. c. 94, §§ 321 through 326 and 301 CMR 4.00 promulgated thereunder, shall be subject to a civil penalty for each violation of not more than \$1,000.

4.08: Effective Date

301 CMR 4.00 shall take effect on January 17, 1983.

4.09: Severability

The provisions of 301 CMR 4.00 are severable, and if any provision or the application thereof is held by a court of competent jurisdiction to be invalid, such invalidity shall not affect any other provision of 301 CMR 4.00.

REGULATORY AUTHORITY

301 CMR 4.00: M.G.L. c. 94, §§ 321 through 326; M.G.L. c. 21A, § 2.